

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

KENNETH R. MARTIN
Goshen, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DAVID C. MARZINI,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 20A04-0602-CR-91
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20C01-0505-FA-85

February 13, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, David C. Marzini (Marzini), appeals his sentence after pleading guilty to possession of methamphetamine weighing three (3) grams or more, with intent to deliver, a Class A felony, Ind. Code § 35-48-4-1.

We affirm.

ISSUE

Marzini raises two issues on appeal, which we consolidate and restate as the following single issue: Whether the trial court properly sentenced Marzini.

FACTS AND PROCEDURAL HISTORY

Marzini lived at 51905 Downey Street, Elkhart, Indiana. On May 9, 2005, the Elkhart County drug task force obtained a search warrant for Marzini's residence. Informants advised police that Marzini owned a Rottweiler dog and several firearms. Upon execution of the search warrant, the police found numerous weapons in the home, including but not limited to, firearms and ammunition, a Taser, a hunting knife, and a throwing star. The police also found a large quantity of cash, and ingredients and evidence of manufacturing methamphetamine.

On November 7, 2005, Marzini pled guilty to possession of methamphetamine weighing three (3) grams or more, with intent to deliver, a Class A felony, I.C. § 35-48-4-1. On December 21, 2005, a sentencing hearing was held. During the hearing, the trial court found the following mitigating factors: (1) accepting responsibility for the present criminal conduct, (2) a college education, (3) a serious addiction, and (4) a serious diabetic condition. In addition, the trial court found the following aggravating

circumstances: (1) Marzini's criminal history, (2) engaging in the distribution of other drugs for a profit, and (3) other lives being put in turmoil as a result of his addictions. A forty-year sentence was imposed, with eight years suspended.

Marzini now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Marzini claims he was improperly sentenced. Specifically, he asserts the trial court (1) improperly enhanced his sentence based on the recognized aggravating and mitigating factors, and (2) pronounced a sentence that was inappropriate in light of his character.

It is well established that sentencing decisions lie within the trial court's discretion. *Hayden v. State*, 830 N.E.2d 923, 928 (Ind. Ct. App. 2005), *trans. denied*. "A court may impose any sentence that is (1) authorized by statute; and (2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances." I.C. § 35-38-1-7.1(d); *see also McMahon v. State*, 856 N.E.2d 743, 748 (Ind. Ct. App. 2006). However, "we presume that by keeping [I.C.] § 35-38-1-3 in place, the legislature intended to require a sentencing statement anytime the trial court imposes a sentence other than the *advisory* sentence under the new statutes." *McMahon*, 856 N.E.2d at 749. And while we will continue to include "an assessment of the trial court's finding and weighing of aggravators and mitigators" in our independent review under Ind. Appellate R. 7(B), the burden ultimately "falls to the defendant to persuade the appellate court that his or her sentence is inappropriate" given that our review is by no way limited "to a simple

rundown of the aggravating and mitigating circumstances found by the trial court.” *Id.* at 748-50. Indiana Appellate Rule 7(B) gives us the authority to revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *See* Ind. App. R. 7(B).

Marzini argues his sentence was inappropriate in light of his character. Our review of the record indicates Marzini was not an upstanding member of society. Despite obtaining a college education, he has since become a threat to the community. Marzini not only dealt methamphetamine, but also dealt other illegal drugs, such as amphetamine. Additionally, Marzini admittedly put other people’s lives in turmoil as a result of addictions facilitated by his dealing drugs. Therefore, we conclude the forty-year sentence imposed by the trial court is appropriate.

CONCLUSION

Based on the foregoing, we find the trial court did not abuse its discretion when it sentenced Marzini to forty years.

Affirmed.

BAILEY, J., and MAY, J., concur.